

Decision Extending the mandate of Mr. David Upcher as an Adviser to the Office of the Disciplinary Counsel

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Convinced of the vital importance to Bosnia and Herzegovina of ensuring that the rule of law is strengthened and followed in

order to create the grounds for economic growth and foreign investment;

Mindful of paragraph I.2.a of the Conclusions of the said Bonn Conference, which recognised “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”, that the judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Noting the Communiqué by the Steering Board of the Peace Implementation Council of 28 February 2002, in which the Steering Board endorsed the reinvigorated strategy for judicial reform proposed by the Independent Judicial Commission for 2002/03, among other things recognising the importance of the creation of a High Judicial Council for BiH and the restructuring of the court system, sentiments that were reiterated in a further Communiqué of 7 May 2002;

Appreciating the fact that the Entities reached an Agreement on the transfer of certain responsibilities relating to the judiciary to the level of Bosnia and Herzegovina, facilitating the creation of a single High Judicial and Prosecutorial Council at the level of Bosnia and Herzegovina;

Noting that the law on the single High Judicial and Prosecutorial Council at the level of Bosnia and Herzegovina entered into force on 1 June 2004 and that it is necessary to secure a seamless transition to the newly-established Council as well as to guarantee continuous operation, membership continuity, continuous international presence, geographical representation and gender and ethnic balance;

Recalling the previous Decision of the High Representative number 214/04 dated 4 June 2004 on Appointment of Members and Advisors to the High Judicial and Prosecutorial Council of

Bosnia and Herzegovina, published in the "Official Gazette of Bosnia and Herzegovina" No 28/04, according to which the mandate of Mr. David Upcher, both as the Advisor to the Office of the Disciplinary Counsel of the High Judicial and Prosecutorial Council, and as the Acting Disciplinary Counsel is expiring on 31 December 2004;

Considering the fact that a candidate for the position of the Office of the Disciplinary Counsel of the High Judicial and Prosecutorial Council has not yet been appointed in accordance with Article 64 of the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No 25/04),

I hereby issue the following

DECISION

Extending the mandate of Mr. David Upcher as an Adviser to the Office of the Disciplinary Counsel

Article 1

(1) This Decision provides for the extension of the mandate of Mr. David Upcher, Attorney from United States, as an Adviser to the Office of the Disciplinary Counsel of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: the Council), until 1 April 2005.

(2) Mr. David Upcher shall continue acting as Disciplinary Counsel under Article 64 of the Law on the High Judicial and Prosecutorial Council (hereinafter: the Law) from 1 January 2005 until such time as a Disciplinary Counsel, appointed by the Council pursuant to the Law, has taken up office, but no later than 1 April 2005.

Article 2

This Decision shall enter into force forthwith and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".

Sarajevo, 13 December 2004
Paddy Ashdown
High Representative